

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA SITTING IN
ITS MARCH TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Louise C. Ngangana and Mansfield Wrotto,)
Attorneys-in-Fact for Frederica Free-Moulton)
and Michael D. Moulton, Administratrix and)
Administrator of the Intestat Estate of Joseph)
Karbar Levee Moulton of the City of Monrovia,)
Liberia.....Appellants)

Versus)

His Honor Judge Scheapolar R. Dunbar, and)
Evelyn Brown Moulton, Widow of the late)
Joseph Karbar Levee Moulton, by and thru her)
Attorney-in-Fact, Mr. Abel J. Moulton of the City)
of Monrovia, Liberia.....Appellees)

GROWING OUT OF THE CASE:)

Evelyn Brown Moulton, Widow of the late)
Joseph Levee Karbar Moulton, by and thru her)
Attorney-in-Fact, Abel J. Mulbah of the City of)
Monrovia, Liberia.....Petitioner)

Versus)

Louise C, Ngangana and Mansfield Wrotto)
Attorneys-in-Fact for Frederica Free-Moulton)
And Michael D. Moulton, Administratrix and)
Administrator of the Intestate Estate of Joseph)
Karbar Levee Moulton of the City of Monrovia,)
Liberia.....Respondents)

Appeal

Petition for the Revocation of
Letters of Administration

Heard: November 16, 2023

Decided: June 14, 2024

JUSTICE WOLOKOLIE DISSENTS

The facts as narrated by the Majority are that the late Joseph Karbar Levee Moulton married the appellee, Evelyn Brown Moulton, on February 25, 1989, in Monrovia Liberia; that on October 4, 2004, the deceased filed an action of divorce against the appellee for

incompatibility of temper before the Civil Law Court, Sixth Judicial Circuit for Montserrado County. However, he did not pursue his divorce action and the case remained pending in the Civil Law Court up until his death in 2020. It is alleged that, after filing the divorce action against the appellee in the Civil Law Court, the deceased subsequently travelled to the United States of America, and filed another divorce action against the appellee in the Circuit Court of Howard County, State of Maryland, USA, where he obtained a bill of divorcement from said court on March 22, 2004, dissolving his marriage with the appellee. It is further alleged that on May 8, 2004, the deceased married the co-appellant, Frederica Free Moulton, in Maryland, the United States of America.

After Joseph Karbar Levee Moulton died in 2020, Co-appellant Frederica Free Moulton and others petitioned the Probate Court for Montserrado County for Letters of Administration in 2021 to administer the properties of the late Joseph Karbar Lee Moulton. In the petition for letters of Administration, Frederica Free Moulton alleged that she was the wife of the deceased. The Probate Court of Montserrado County granted the petition. Subsequently in 2022, the appellee, Evelyn Brown Moulton, filed a petition to revoke the Letters of Administration issued to Frederica Free Moulton and others, alleging that Frederica Free Moulton was only a girlfriend of the decedent, since he had not divorced her, the appellee, as evidenced by his divorce action still pending in the Civil Law Court, Liberia; that if the decedent married the co-appellant, Frederica Free, while they were in the U.S.A., he committed bigamy since he was still legally married to the appellee under the law.

The Probate Court had a hearing on the petition for revocation and ruled on the issues: 1) Whether the decedent, Joseph Karbar Levee Moulton, purported divorce of the appellee on March 24, 2004, in the USA was legal; and 2) whether the appellee had produced sufficient evidence to warrant the revocation of the Letters of Administration issued by the Probate Court to Frederica Free Moulton and others?

The Probate Judge ruled that a writ of subpoenaed duces tecum ad testificandum was served on the clerk of the Civil Law Court; that he appeared with the records from the Sixth Judicial Circuit, Civil Law Court, and testified that the divorce action filed by the decedent in October 4, 2004, was still pending in the Civil Law Court; that the Co-appellant Frederica Free had produced a bill of divorcement from the Circuit Court of Howard County in the State of Maryland, USA, showing that the deceased had divorced the appellee, Evelyn Brown Moulton, along with a certificate of marriage showing that the decedent had subsequently married her (Frederica) about two months thereafter. The probate Judge held that the co-appellant, Frederica Free, adduced no evidence or records as to how the deceased severed

his marriage contract with the appellee; that there was no evidence of whether the appellee was ever summoned by or brought under the jurisdiction of the Circuit of Maryland, USA, and had her due process rights accorded her before the court issued the bill of divorcement.

The Judge held that the burden shifted to the co-appellants and others to prove that the appellee was brought under the jurisdiction of the foreign court when the divorce action was filed and concluded, since the appellee was in Liberia in 2004 during the pendency of the case in the USA, a foreign jurisdiction. The Judge cited section 25.12 of the Civil Procedure Law, which states:

“A foreign judgement in a case in which the defendant did not appear although a party thereof shall not be admissible against him; but if any person appeared on his behalf in the case, the foreign judgement shall be admissible unless he shows that the appearance was without his authorization....”

The Probate Judge concluded that the appellants having failed to bring such evidence showing that the appellee was brought under the jurisdiction of the foreign court where the divorce action was said to have been filed and obtained, or that she was represented by someone with her consent, the appellee remained the wife of the deceased up and until his death. He therefore ordered the letters of administration previously issued by the Probate Court to the co-appellant Frederica Free and others revoked.

The Majority of the Supreme Court has today reversed and overturned the ruling of the Probate Court, terming the ruling as erroneous and contrary to law. The crux of the analysis underpinning the Majority Opinion, overturning the Probate Judge, is summed up in the following paragraphs of their Opinion:

“The trial judge, also in his final ruling, reasoned that the 2004 divorce judgement entered by the American Court was not valid and enforceable for want of jurisdiction over the appellee, due to the pendency of the divorce action between the deceased and appellee Evelyn Moulton in Liberia and based on the law that foreign judgment obtained against a person in a trial in which the person was not present or represented is not enforceable. To begin with, we are left to wonder about the basis of the judge’s conclusion that the co-appellee was never brought under the jurisdiction of the Howard County Circuit Court when the judge himself stated in his ruling that the returns to the writ of summons were never produced. However, we believe that the real issue here ought to be that in the face of the divorce certificate, did the co-appellant Fredrica Free Moulton have a duty to produce court records of the divorce between the appellee and the deceased? Neither is it co-appellant Fredrica Free Moulton who filed for divorce action nor was she a party to the said action. Once the court issued the certificate [bill of divorcement], it is deemed correct unless the contrary is established.

Additionally, unless it can be established that the co-appellant Fredrica Free Moulton, in any manner of form, connived in fraudulently procuring the said instrument [bill of

divorcement], she acted in good faith. It, therefore, ought not to be the duty of the co-appellant to prove whether the appellee was served the summons, thereby bringing her under the jurisdiction of the court. We agree that it is the law that he who alleges a fact has the burden to prove it. It is, however, also an exception to that law that “when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party. 1LCLR 25.5 In the instant case, co-appellant Fredrica Free Moulton, who was not party to the alleged divorce proceedings between the appellee and the deceased, cannot be expected to have in her possession instruments such as the precepts that were issued by the court during the pendency of the said action. The divorce certificate is the best evidence to induce her reliance. It is the party that challenges the validity of the certificate that has the onus to produce evidence to the contrary. In the instant case, none of the appellee two witnesses produced any evidence challenging the authenticity or validity of the said certificate.

The unrefuted testimonies of co-appellant Fredrica Free Moulton and her witnesses stated that copy of the divorce certificate was sent to the appellee through her daughter placed upon the appellee the burden to act in defence of her purported marriage. The records show that not only did the appellee not act, but the appellee also sat supinely as co-appellant Fredrica Free Moulton and the deceased openly and notoriously presented and represented themselves as husband and wife to the world and in full glare and to the knowledge of the appellee without any objection whatsoever. As if these were not sufficient, the undisputed evidence shows that the appellee filled out an application form for a passport in which she referred to herself as single. It is the law that he who should speak and elect to remain silent assents. (citation) The silence, inaction, and action of the appellee enumerated hereinabove clearly demonstrate her acquiescence to the divorce and a waiver of her rights. She, therefore, suffers from laches. Equity will not permit her to change her position in light of changing reality. A waiver is the intentional or voluntary relinquishment of a known right or such conduct as warrants an inference of the relinquishment, while the doctrine of estoppel is based upon the ground of public or policy, fair dealing, good faith, and justice and its purpose is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably rely thereon. *METCO v Chase Manhattan Bank* 34 LLR 419(1987). The appellee, being in possession of the divorce certificate and having knowledge that the co-appellant Fredrica Free Moulton and the deceased were openly and notoriously presenting themselves as husband and wife without objecting, suffered waiver and laches and therefore estopped from challenging the marriage of the Co-appellant after the death of the deceased. For the reasons enumerated herein, we cannot uphold and confirm the trial judge’s final ruling revoking the letters of administration issued in favor of the appellants.”

The Majority has stated that they agree that it is the law that he who alleges a fact has the burden to prove it, but there is an exception to that law, which is, when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party. 1LCLR 25.5; that the co-appellant Fredrica Free Moulton, who was not party to the alleged divorce proceedings between the appellee and the

deceased, cannot be expected to have in her possession instruments such as the precepts that were issued by the court during the pendency of the said action.

I find it difficult to comprehend this reasoning of my colleagues. How could the appellee who claims that she was not aware of a divorce proceeding filed by her husband abroad, as she was not summoned and brought under the jurisdiction of the court abroad, be expected to give evidence that a proceeding of divorce was brought against her in the Howard County Circuit Court? The onus is on the co-appellant Frederica who stated that she presented the divorce to the daughter of the appellee and that the appellee had subsequently filled in a form to obtain a passport in which she stated that she single. The party who introduces into evidence a foreign judgment has the burden of proving that it is valid and meets the requirement of the law.

The Majority also states that none of the appellee's two witnesses produced evidence challenging the authenticity or validity of the divorce certificate. I do not know what evidence the Majority expected, since they recorded in their Opinion the testimonies of the appellee's two witnesses.

The appellee's first witness, Ruthie A.C. Mills, testified that she was the Godchild of Evelyn Brown Moulton and the decedent Joseph Kabar Levee Moulton and she was at the wedding of the couple. She confirmed that the decedent did file a divorce action against the appellee in Liberia but he did not pursue the case and the couple remained married until the death of the decedent. The appellee's second witness, Abel J. Mulbah, who is married to the granddaughter of the appellee and the deceased, testified that sometime in 2011 - 2012, he was present at the residence of the couple when the deceased came to Liberia and visited his wife; that he saw them kissing in the living room and did not know of the deceased having filed and obtained a divorce abroad dissolving his marriage to the appellee and then subsequently married the co-appellant. Both witnesses confirmed the marriage of the appellee and the decedent in 1989, and stated that as to their knowledge the appellee and the decedent were married up until his death.

Both of these witnesses who lived in Liberia, in essence stated that they knew nothing of the divorce instituted by the decedent in the USA; but assuming that they knew, how would that have negated the fact that the appellee was not legally brought under the jurisdiction of this foreign court and allowed to exercise her due process right in the divorce action?

The Majority further states that the appellee suffered waiver and laches as she did not act when she heard about the divorce; that she sat supinely as co-appellant Fredrica Free

Moulton and the decedent openly and notoriously presented themselves as husband and wife to the world and in full glare and to the knowledge of the appellee without any objection whatsoever; that when the decedent and the co-appellant visited Liberia in 2012, and went to visit the Shiloh Baptist Church along with the co-appellant Frederica, the decedent introduced her as his wife.

We note from the records that there is doubt and uncertainty whether the appellee was present in church the day the decedent was alleged to have presented the co-appellant Frederica as his wife. The co-appellant Frederica Free in her testimony stated that the appellee was present that day at the church, but her witness Barbara-Lee Moulton, the daughter of the decedent, on the other hand, when asked whether the appellee was in church when the alleged pronouncement was made, she stated that she was not sure.

Frankly, I find all these facts presented by the co-appellant Frederica Free irrelevant to the issue of whether the decedent obtained a valid divorce as the law dictates before he entered into marriage with her.

The Majority has today set a dangerous precedent that a marriage can now be considered dissolved simply because a spouse who is not aware of a divorce proceeding brought against her in a foreign jurisdiction but who subsequently heard about the proceeding fails to act. In the Majority view, the failure of a spouse to act even when a divorce judgment is null and void on its face equates to an acquiescence to the divorce. This view turns the law on its face and undercuts the stern protection the law has given to the sanctity of the marital contract over more than a century in this country.

My disagreement with the Majority stems from my regard to the inviolability of the marriage contract so that it is legally placed in a unique category of contracts. Marriage as is often said, should not be entered into lightly. This Court has held that other contracts may be modified, restricted or enlarged, or entirely released upon the consent of the parties. But not so with marriage. The relationship once formed, the law steps in and holds the parties to various obligations and liabilities. The Supreme Court in the case, *Korkoya v Korkoya*, quoting Chief Justice Grimes, wrote:

“A divorce suit, while on its face is a mere controversy between private parties of record, is as truly viewed, a triangular proceeding *suis generis*, wherein the Republic, or government occupies in effect the position of a third party.

Marriage is a relation in which the public is deeply interested and is subject to proper regulation and control by the state or sovereignty in which it is assume or exist. The

public relating to marriage is to foster and protect it, to make it a permanent and public institution, to encourage the parties to live together, and to prevent separation. This policy finds expression in probably every state in this country in legislative enactments designed to prevent the sundering of the marriage ties for slight or trivial causes or by the agreement of the husband and wife, or in any case except on full and satisfactory proof of such facts as by the legislature have been declared to be cause for divorce. Such provisions find their justification only in this well recognized interest of the state in the permanency of the marriage relation. The rights to a divorce exist only by legislative grant, the marriage contract in this respect being regulated and control by the sovereign power, and not being, like ordinary contracts, subject to dissolution by the mutual consent of the contracting parties, but only for the causes sanctioned by law. Other contracts may be modified, restricted, or enlarged, or entirely released upon the consent of the parties. Not so with marriage. The relation once formed, the law steps in and holds the parties to various obligations and liabilities. It is an institution, in the maintenance of which in its purity, the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress.

While an action to obtain a decree dissolving the relation of husband and wife is nominally an action between two parties, the state, because of its interest in maintaining the same unless good cause for its dissolution exist, is an interested party. It has been said that the courts and eminent writers on the subject that such an action is really a triangular proceeding, to which husband and wife and the state are parties. When an attempt is made through the courts to undo a marriage, the state becomes in a sense a party to the proceedings, not necessarily to oppose but to make sure that the attempt will not prevail without sufficient lawful cause shown by the real facts of the case, nor unless those conditions are found to exist at the time the decree is made on which the state permits a divorce to be granted. Both the policy and the letter of the law concord in guiding against collusion and fraud and it should be the aim of the court to afford the fullest possible hearing in such matters. So, on the ground of public interest, the courts are more ready than in other proceedings to relieve against defaults and to grant continuances. To discover and defeat any attempt to use, the form of the law of divorce for vindictive or fraudulent purposes, is a proper exercise of the legal discretion vested in all courts having divorce jurisdiction. The courts are bound to protect the public interest as well as the rights of the parties themselves, and hence before a party is entitled to a divorce it must be made to appear by proof that he or she is innocent and injured party." *Korkoya v Korkoya*, 37 LLR 553, 561-562 (1994); *Sio v Sio*, 34 LLR 245, 250 (1986); *Korkoya v Korkoya*, 37 LLR 553 (1994); *Ireland v Ireland*, 31 LLR 249)

What we see frequently happening, in our society now-a-day, and which the Majority has today given its approval of in its Opinion, is that male spouses who attempt to divorce their wives for others, and see that their wives are prepared to challenge their divorce filed, halt the divorce action, and move out of their marital homes to cohabit with their concubines. Some, like the decedent in this case, move to other jurisdictions and marry without the knowledge of their wives, and when they die, there comes the issue of who is the legal wife.

Wives who are often without the financial means to take proper legal action, condone these males' desertion. For me, the question is, can a male walk out his home, move to another jurisdiction, get a divorce without the knowledge of his spouse and subsequently enter into another marriage? I say "no". For the Majority, this can be condoned once the wife does not take action even when she does not have the financial means to challenge the foreign judgment illegally procured against her. I can only but express pity for the thousands of women who may in the future fall prey to the dangerous precedent this Court has set today.

A divorce which is an action in rem does require compliance with the rules relating to service of process and proper notice. Due process of law requires that a defendant receive notice that is reasonably calculated to apprise the defendant of the pendency of the action and afford an opportunity to defend, unless notice is properly waived.

It was the co-appellant Frederica Free that presented the bill of divorcement to the court here in Liberia alleging that the decedent obtained a bill of divorcement on March 22, 2004, and subsequently married her a little over a month on May 8, 2004. Having brought these documents of divorce and marriage, the onus was on her to give evidence that at the time of her marriage to the decedent, he was not married because he had legally severed his ties of marriage with the appellee. It was she who then had to provide the probate court with the needed and necessary evidence since the validity of her marriage is predicated on the legality of the decedent divorce from the appellee. It is a common legal maxim that what is not done legally is not done at all. Hence, if the decedent divorce in the USA was not legally obtained, a subsequent marriage by him to the co-appellant was null and void.

Section 6.1 of our Domestic Relations Law declares a marriage between persons one or both of whom has a spouse still living at the time of marriage as bigamous; that such marriage is void even without a judicial declaration thereof, and is of absolutely no effect, notwithstanding that an action to declare their nullity may be maintained.

The Domestic Relations Law, at Chapter 8. *DIVORCE*, states:

"In an action for divorce, a final judgment shall not be entered by default for want of appearance or pleading, or by consent, or upon trial of an issue, without satisfactory proof of the facts constituting the grounds for divorce in all cases. The party seeking the divorce shall prove that there has been no such cohabitation between them nor such other conduct as would bar a judgment. In any action, for divorce, whether or not contested, the declaration or confession of either party to the marriage is not alone sufficient as proof, but other satisfactory evidence of the fact must be produced."
(Subsection 8.5" Proof Required).

Whether the appellee heard and was aware of the decedent's divorce and subsequent marriage, I opine is irrelevant and does not negate the fact that the divorce obtained was illegal and contrary to the universal principle of due notice to allow the appellee an opportunity to put forth her defence, especially considering that the decedent failed to proceed with his divorce action in our jurisdiction, and it remains pending. For the decedent to have had a divorce case pending in our jurisdiction and proceed to obtain a divorce in another jurisdiction without giving the appellee the required legal notice to appear before the court rendered his alleged divorce null and void for all legal purposes under our Jurisdiction.

It is the duty of courts to strictly uphold the laws as it pertains to marriage, since laws relating to marriages are to ensure societal balance and stability of families, and the courts as representative of the state in a marriage contract are bound to ensure just that. Courts are duty bound to study the intent of legislations and apply them accordingly.

From the evidence presented, the co-appellant and her representatives having failed to show prima facie evidence that the alleged divorce between the decedent and the appellee was obtained by the decedent as required by law, said divorce was null and void as to all intents and purposes in our jurisdiction, and the decedent's marriage to the co-appellant was therefore unlawful and bigamous under our Jurisdiction. The Judgment of the lower court therefore should have been upheld by the Supreme Court.

In view of the foregoing reasons, I decline to append my signature to the Judgment signed by the majority.

Signed _____
Jamesetta Howard Wolokolie
Associate Justice